

CALIFORNIA CODE OF REGULATIONS

Title 23. Waters

Division 2. Department of Water Resources

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Chapter 1. Dams and Reservoirs

Article 1. General Provisions

301. Definitions.

As used in this subchapter, the terms “dam”, “reservoir”, “owner”, “alteration”, enlargement”, and “water storage elevation” shall have the meanings given in Sections 6002 and 6004.5 through 6008 of the Water Code.

NOTE: Authority cited: Section 6078, Water Code.

Reference: Sections 6002-6008, Water Code.

302. Purpose and Effect of Regulations.

The regulations in this subchapter are not intended to limit the authority of the department to act under the police power of the state to the extent authorized by law, when necessary to protect life and property from a dam or reservoir which constitutes, or which may constitute a danger to life and property, and they shall not be interpreted as depriving the department of such authority.

NOTE: Authority cited: Section 6078, Water Code.

Reference: Sections 6075, 6081, and 6110, Water Code.

303. Evidence of Water Rights.

- (a) The department will not issue a written approval to commence construction or enlargement of a dam or reservoir until the applicant or owner demonstrates evidence of adequate water rights in accordance with the requirements of this section.
- (b) The applicant or owner shall provide the department with either:
 - (1) A copy of an entitlement to the use of water issued by the State Water Resources Control Board pursuant to Division 2, Part 2 (commencing with Section 1200) of the Water Code; or
 - (2) If the right to divert or use water does not depend on an entitlement identified in subsection (1) above, a statement of the legal basis of the right.
- (c) The applicant or owner shall also provide the department with either:

- (1) Evidence that a statement of water diversion and use has been filed with the State Water Resources Control Board pursuant to Division 3, Part 1, Chapter 5 (commencing with Section 5100) of the Water Code, or
 - (2) A statement either establishing that a statement of water diversion and use is not legally required, or showing good cause for not filing one.
- (d) The department shall obtain a written statement from the staff of the State Water Resources Control Board stating whether the water right is adequate for the proposed dam and reservoir.
 - (e) If a right to divert or use water is based upon a claim of riparian rights, or rights to appropriate water established prior to 1914, and such claim is disputed by the State Water Resources Control Board, the department shall not withhold approval to commence construction solely upon the basis of such a dispute, provided that it is satisfied with the evidence of a water right provided pursuant to subsection (b) above.
 - (f) In the event that the State Water Resources Control Board has initiated proceedings to determine whether to authorize use of water, and no decision has been issued, written approval to commence construction or enlargement shall not be withheld pursuant to this section after the 120th day following either the date that the matter is submitted to the Board for decision after hearing or, if no hearing is held, the date on which the protest period closes.

NOTE: Authority cited: Section 6078, Water Code.

Reference: Sections 1052, 6075, 6202(d), 6205, and 6264, Water Code.

304. Civil Engineering Plans and Specifications.

Plans and specifications which are submitted to the department shall be prepared by, or under the direction of, a civil engineer who is registered pursuant to California law and authenticated by him as provided in the Business and Professions Code, or be prepared by such other person as may be permitted under the provisions of said code to prepare such plans and specifications, in which case satisfactory evidence of such other person's right to

so act shall be submitted to the department when the plans and specifications are submitted.

NOTE: Authority cited: Section 6078, Water Code. Reference: Section 6206 Water Code; and Sections 6371, 6374-6375, Business and Professions Code.

305. Civil Engineering Supervision of Construction.

The work of construction, enlargement, repair, alteration or removal of a dam or reservoir shall be under the responsible charge of a civil engineer who is registered pursuant to California law or of such other person as may be permitted under the provisions of the Business and Professions Code to assume responsible charge of such work.

NOTE: Authority cited: Section 6078, Water Code. Reference: Section 6206, Water Code; Sections 6731, 6374-6375, Business and Professions Code.

Article 2. Applications for Construction, Enlargement, Repair, Alteration, Removal of Dams or Reservoirs

310. Applications for Construction or Enlargement.

(a) This section shall apply to applications for the department's approval of plans and specifications for the construction or enlargement of dams and reservoirs.

(b) Applications for construction or enlargement of a dam and reservoir shall be made on printed forms provided by the department. The department shall also provide written instructions for completing the application.

(c) The amount of information required will depend on factors such as the size of the proposed dam and reservoir, potential hazards, hydrology of the watershed, complexity of the site and proximity to active faults.

(d) Plans, maps, specifications and other information required for an application shall be provided in sufficient clarity and detail to be readily interpreted and studied, and to permit an adequate evaluation of the safety of the proposed work.

(e) The department may require the filing of any information, in addition to that specified in this section which, in its opinion, it considers necessary to determine the safety of the dam and reservoir.

(f) In addition to the information required by the Water Code Sections 6201-6206, and subsections (b)-(e), an application shall also include the following:

(1) Evidence of water rights, as required by Section 303.

(2) Information necessary to enable the department to comply with the requirements of the California Environmental Quality Act (Public Resources Code Sections 21000-21174). This information shall be either:

(a) A copy of the environmental impact report (EIR) or negative declaration prepared by a lead agency, or evidence that a lead agency is preparing or will prepare environmental documentation, or

(b) Data and information necessary for the department to act as a lead agency to prepare environmental documentation, where it is required by law to do so.

(3) Where the department acts as a responsible agency, the lead agency's EIR or negative declaration must be submitted to the State Clearinghouse.

(4) The fee as required by Water Code Section 6300, as made specific by Section 314 of this subchapter.

NOTE: Authority cited: Section 6078, Water Code. Reference: Sections 6200-6206, Water Code; and Sections 21002.1(d) and 21083, Public Resources Code.

311. Criteria for Determining Completeness.

(a) Applications will be considered complete when the department has received the completed, signed application form, the information and fee required in Water Code Sections 6201 and 6206 and Section 310(d)-(f), and the fee required by Sections 6300-6302 of the Water Code.

(b) The department on its own motion may waive any information required for a complete application, including but not limited to the requirements of Section 303 where it determines that it has sufficient information to commence and complete a review within applicable time limits, and that all requirements for issuance of an approval will be met within such time limits.

(c) The requirements published by the department pursuant to Section 310 shall set forth the procedures that the department will follow to review an application.

(d) Failure to comply with a request for information pursuant to such procedures within a reasonable time and in a reasonably responsive manner shall be cause for the department to disapprove the application.

NOTE: Authority cited: Section 6078, Water Code. Reference: Section 65941, Government Code.

312. Standard Terms

(a) The following are standard terms and conditions included in any approval of a dam safety application:

(1) Construction work shall be started within one year from date of approval.

(2) No foundations or abutments shall be covered by the material of the dam until the Department has been given an opportunity to inspect and approve the same.

(b) General Safety Requirement. In addition to the above terms and conditions, the law requires that a dam shall at all times be designed, constructed, operated and maintained so that it shall not or would not constitute a danger to life or property, and the Department may, at any time, exercise any discretion with which it is vested, or take any action necessary to prevent such danger.

NOTE: Authority cited: Section 6078, Water Code. Reference: Sections 6075, 6260-6267, Water Code.

313. Automatic Approval of Applications.

Applications approved in accordance with Government Code Section 65956 shall contain the terms and conditions set forth in Section 311. Such approvals may be revoked or modified at any time and under any conditions which would apply to any other approval granted under Division 3, Part 1 of the Water Code.

NOTE: Authority cited: Section 6078, Water Code. Reference: Section 65956, Government Code; and Sections 6260-6267, Water Code.

314. Filing Fee.

(a) Amount of Fee. The estimated cost of the dam and reservoir or enlargement as specified in Section 6302 of the Water Code shall include engineering, geologic, surveying, construction supervision, and administrative costs.

NOTE: Authority cited: Section 21082, Public Resources Code; Section 6078, Water Code. Reference Section: 21089 Public Resources Code; Sections 6301-6305, Water Code.

Article 3. Annual Fee.

315. Annual Fee.

(a) Determination of Amount. The department shall determine the amount of the fee in accordance with Section 6307 of the Water Code. Each owner shall be informed of the amount of the fee by April 30 of each year.

(b) Penalty for Delinquent Payment of Annual Fee. An owner who fails to pay any part of any annual fee on or before July 1, as required by Section 6307 of the Water Code, shall be penalized in accordance with Section 6428 of the Water Code.

NOTE: Authority cited: Section 6078, Water Code. Reference: Section 161, Water Code; and Sections 6307 and 6428, Water Code.

316. Inoperative Dams.

A dam will not be considered to be substantially completed or in operation for annual fee purposes, where the department determined that it has been rendered inoperative on other than a temporary basis. In making its determination the department will consider the following circumstances, among others, with respect to the dam:

(a) Alteration of the outlet facilities to assure maximum possible uncontrolled water release through the outlet works.

(b) Absence of water impounding capability under reasonably foreseeable conditions, taking into account the size of the drainage area.

(c) Absence of benefit from the dam and reservoir to the owner or others.

The Department may determine that a dam is no longer inoperative when investigation reveals that conditions which rendered the dam inoperative on other than a temporary basis have changed. In this event the dam will be considered substantially completed or in operation on the date such determination is made, and the annual fee shall be charged on a pro rata basis.

NOTE: Authority cited: Section 6078, Water Code.
Reference: Section 6307, Water Code.

Article 4. Small Dams Review Board

320. Small Dams Review Board.

In the Department there shall be a Small Dams Review Board consisting of a chairperson who shall be the Division Chief, Division of Design and Construction; a qualified engineer or geologist appointed by the Division Chief, Division of Safety of Dams; and, for each review, a consulting engineer who would be agreed upon by the Department and the dam owner.

NOTE: Authority cited: Section 6078, Water Code. Reference: Section 6054, Water Code.

321. Scope of Review

(a) The Board shall be convened upon the request of any owner of a small dam or proposed small dam to review any decision or order of the department respecting any technical standard, study requested, engineering requirement or other technical matter required by the department where the owner disputes the basis for such requirement, the need for such requirement, or the facts found by the department.

(b) No review shall be undertaken if, in the opinion of the department, there exists an immediate hazard to life or property. This subsection shall not be construed to bar a Small Dams Review Board proceeding after, in the judgment of the department, an immediate hazard to life and property no longer exists.

NOTE: Authority cited: Section 6078, Water Code.
Reference: Section 6054, Water Code.

322. Small Dam Defined.

"Small Dam" means any dam less than 25 feet in height with a reservoir storage less than 2,000 acre-feet.

NOTE: Authority cited: Section 6078, Water Code.
Reference: Sections 6054 and 6055, Water Code.

323. Time to Request Board Review; Filing Fee.

(a) The owner must request board review within 60 days of the disputed departmental action. The request must be made to the Division Chief, Division of Safety of Dams, and must state the facts and circum-stances on which such owner bases his grievance.

(b) The owner shall remit, at the time the grievance is filed the amount of \$250 to partially defray the cost and expense of the Board.

(c) If the Board meets for more than one day, the department shall bill the owner for its additional costs incurred for subsequent days.

NOTE: Authority cited: Section 6078, Water Code.
Reference: Sections 6054 and 6055, Water Code.

324. Time and Conduct of Review.

The Board shall review the owner's grievance promptly after such grievance is filed. The review shall be conducted in an informal manner. The Board shall consider all relevant information and data presented by the owner, his engineer, or any other person.

NOTE: Authority cited: Section 6078, Water Code.
Reference: Section 6054, Water Code.

325. Findings of the Board.

Based upon information and data secured during the review, the Board shall refer its findings to the Division Chief, Division of Safety of Dams, regarding the matter which led to the grievance. Decisions made by the Division Chief shall be final.

NOTE: Authority cited: Section 6078, Water Code.
Reference: Section 6054, Water Code.

Article 5. Dams Owned by the Department
of Water Resources

330. Consulting Board.

Pursuant to Section 6056 of the Water Code, the department shall retain a board of three consultants to report to the Director on the safety of dams owned by the department.

NOTE: Authority cited: Section 6078, Water Code.
Reference: Section 6056, Water Code.

331. Scope of Review.

The consulting board shall make independent findings with regard to conditions which may affect the safety of the dam and reservoir as specified in Section 6081 of the Water Code, and the board shall also make independent findings that the dam is safe to impound water, as specified in Section 6355 of the Water Code.

NOTE: Authority cited: Section 6078, Water Code.
Reference: Sections 6056, 6081, 6355, Water Code.

332. Actions for Which Board is Retained.

(a) The department shall retain a consulting board:

(1) To review the adequacy of the design of a dam and reservoir the department proposes to construct, or

(2) To review the safety of the completed construction and the terms and conditions to be included

in a certificate of approval for any dam owned by the department as issued, renewed or modified, no later than six months following any such action.

(b) Where a board is retained to review the adequacy of the design of a dam and reservoir, it shall report its findings to the Director prior to the approval of an application to construct or enlarge the dam.

NOTE: Authority cited: Section 6078, Water Code.
Reference: Section 6056, Water Code.

333. Periodic Review.

In addition to the times specified in Section 332, the department shall retain a review board at least once every five years to review the operational performance of department owned dams. The Federal Power Commission's five year independent review may be substituted if it is comparable to the review required by this article.

NOTE: Authority cited: Section 6078, Water Code.
Reference: Section 6056, Water Code.